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BEFORE THE ARIZONA CORPORATION COMMISSION

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Gary Pierce, Chairman
Bob Stump
Sandra D. Kennedy
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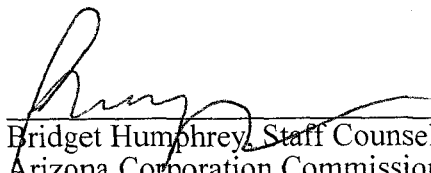
IN THE MATTER OF STAFF'S
REQUEST FOR COMMISSION RELIEF
TO ORDER PAYSON WATER
COMPANY AND STEVE PRAHIN TO
ENSURE CONTINUED WATER
SERVICE TO CUSTOMERS.

DOCKET NO. W-03514A-11-0412

NOTICE OF FILING

Staff Counsel hereby files copies of the Proposed Opinion and Order in the above-captioned matter.

RESPECTFULLY SUBMITTED this 17th day of November, 2011.


Bridget Humphrey, Staff Counsel
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

Original and thirteen (13)
copies of the foregoing filed this
17th day of November, 2011 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copies of the foregoing
mailed this 17th day of
November, 2011 to:

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Arizona Corporation Commission

DOCKETED

NOV 17 2011

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By Roseann Osorio

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 Gary Pierce, Chairman
4 Bob Stump
5 Sandra D. Kennedy
6 Brenda Burns

7 **IN THE MATTER OF STAFF'S**
8 **REQUEST FOR COMMISSION RELIEF**
9 **TO ORDER PAYSON WATER**
10 **COMPANY AND STEVE PRAHIN TO**
11 **ENSURE CONTINUED WATER**
12 **SERVICE TO CUSTOMERS**

DOCKET NO. W-03514A-11-0412

DECISION NO. _____

PROPOSED OPINION AND ORDER

13 **BY THE COMMISSION:**

14 Having been fully advised of the circumstances in this matter the Commission finds,
15 concludes, and orders that:

16 **FINDINGS OF FACT**

17 1. On August 18, 1989, the Commission approved a Main Extension Agreement entered
18 into between United Utilities and Elusive Acres. On June 19, 1998, the Commission issued Decision
19 No. 60972 in Docket Nos. W-03514A-98-0073, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, and 04, which
20 transferred the Certificate of Convenience and Necessity of United Utilities to Brook Water. L.L.C.,
21 including that of Payson Water Company (the "Company"). The Company provides service to two
22 subdivisions -- Geronimo Estates and Elusive Acres -- in Gila County, Arizona.

23 2. On June 25, 2007, Steve Prahin filed a formal complaint against the Company, in
24 Docket No. W-03514A-07-0386, regarding water service issues. That matter is still pending before
25 the Commission. Although that Complaint did not address ownership of certain plant infrastructure,
26 during the course of that proceeding, Mr. Prahin has asserted that he purchased the parcel or parcels
27 of land on which the well(s) serving Elusive Acres and/or Geronimo Estates are located at a tax sale
28 and that he thereby acquired ownership of the well(s), tank(s) and other plant infrastructure located
on the subject parcel(s).

3. By contrast, the Company asserts that it owns that infrastructure pursuant to the Main

1 Extension Agreement and Decision No. 60972, above.

2 4. As a result, a dispute currently exists as to who owns the well and other physical
3 assets located on the relevant parcel.

4 5. These assets are currently used and useful to provide water service within the
5 Company's service area. These assets are necessary to ensure continued water service and are
6 therefore dedicated to public use.

7 6. Mr. Prahin has stated on a number of occasions that he would shut off service to the
8 Company's customers and, on November 14, 2011, left a message for Commission Staff indicating
9 that he had turned off the water tank and that there would be no water in the canyon. Beginning
10 November 16, 2011, the Commission has been advised by customers of Elusive Acres and Geronimo
11 Estates that they are without water service.

12 7. Mr. Prahin has refused the Company access to the tank and well, and the Company
13 has been unable to obtain access through the assistance of law enforcement.

14 8. Due to the actions of Mr. Prahin, the Company is unable to provide and maintain
15 service to water customers absent action by this Commission.

16 9. Mr. Prahin has refused to provide water service to customers in Elusive Acres.

17 10. To the extent that Mr. Prahin has any alleged ownership interest in plant that is
18 dedicated to public use, he thereby becomes a public service corporation in fact, subject to the
19 Commission's jurisdiction, and it is necessary to appoint an interim manager to operate the plant.
20 Payson Water Company is hereby designated as said interim manager during the pendency of this
21 ongoing dispute.

22 11. Because Mr. Prahin has interfered with continued water service to the public, it is
23 necessary to appoint an interim manager to operate that plant. Payson Water Company is hereby
24 designated as said interim manager during the pendency of this ongoing dispute.

25 12. Because Payson Water Company holds a CC&N, and because Payson Water
26 Company also claims to own the plant, it is a public service corporation subject to the Commission's
27 jurisdiction.

28 13. The Company is hereby required to take all necessary and appropriate steps to ensure

1 continued water service to its customers, including serving as interim manager to Mr. Prahin (under
2 the view that Mr. Prahin may own the assets), and seeking resolution of this dispute.

3 14. The Company shall docket a report with the Commission that provides a status update
4 on this matter within two weeks from the date of this order. This report shall discuss whether the
5 Company has considered seeking a judicial resolution to this dispute. If the Company concludes that
6 seeking judicial relief is not in its best interests, or its customers' best interests, it shall explain the
7 rationale for that conclusion in its report.

8 CONCLUSIONS OF LAW

9 1. The Commission has jurisdiction over the Company, Steve Prahin and the subject
10 matter contained herein pursuant to Article XV of the Arizona Constitution and Title 40 of the
11 Arizona Revised Statutes.

12 2. Notice of the proceeding has been given in the manner prescribed by law.

13 3. The Commission finds that that an emergency situation exists which necessitates the
14 Commission's expedited action.

15 4. The owner of the plant infrastructure, whether it is the Company or Mr. Prahin, is a
16 public service corporation as defined in Article XV of the Arizona Constitution, and as such, is
17 subject to the Commission's jurisdiction.

18 5. It is in the public interest to grant the relief described in Findings of Fact 10 through
19 14 on an expedited basis.

20 ORDER

21 **IT IS THEREFORE ORDERED** that, to the extent that Mr. Prahin has any alleged
22 ownership interest in plant that is dedicated to public use, he thereby becomes a public service
23 corporation in fact, subject to the Commission's jurisdiction.

24 **IT IS FURTHER ORDERED** that, due to Mr. Prahin's has interference with continued
25 water service to the public, it is necessary to appoint an interim manager to operate that plant. Payson
26 Water Company is hereby designated as said interim manager during the pendency of this ongoing
27 dispute.

28 **IT IS FURTHER ORDERED** that, inasmuch as Payson Water Company holds a CC&N

1 and also claims to own the plant, it is a public service corporation subject to the Commission's
2 jurisdiction.

3 **IT IS FURTHER ORDERED** that the Company is hereby required to take all necessary and
4 appropriate steps to ensure continued water service to its customers, including serving as interim
5 manager to Mr. Prahin (under the view that Mr. Prahin may own the assets), and seeking resolution
6 of this dispute.

7 **IT IS FURTHER ORDERED** that the Company shall docket a report with the Commission
8 that provides a status update on this matter within two weeks from the date of this order. This report
9 shall discuss whether the Company has considered seeking a judicial resolution to this dispute. If the
10 Company concludes that seeking judicial relief is not in its best interests, or its customers' best
11 interests, it shall explain the rationale for that conclusion in its report.

12 **IT IS FURTHER ORDERED** that water service shall be restored to the customers of
13 Payson Water Company served by the well and tank located on the subject real property forthwith,
14 subject to any existing tariffs of Payson Water Company.

15 **IT IS FURTHER ORDERED** that Steve Prahin is enjoined from interfering with the
16 operation of the well, tank and other plant infrastructure which may be located on any property in
17 which he has an interest and from prohibiting the Company or its employees from accessing the plant
18 infrastructure.

19 **IT IS FURTHER ORDERED** that this decision shall be effective immediately.

20
21 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**
22

23 _____
CHAIRMAN

COMMISSIONER

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26 _____
COMMISSIONER

COMMISSIONER

COMMISSIONER
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IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
Executive Director of the Arizona Corporation Commission,
have hereunto, set my hand and caused the official seal of this
Commission to be affixed at the Capitol, in the City of
Phoenix, this _____ day of _____, 2011.

ERNEST G. JOHNSON
Executive Director

DISSENT: _____

DISSENT: _____